IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22443 of 2004

Between:

P.Satyanaryana S/o.Sri.P.Bhaskara Rao
M/s.Bharat Sanchar Nigam Ltd, Giddalur,
Prakasam Dist 523 357.

..... PETITIONER

AND

1 The Union of India rep by Secretary to Govt., Dept., of Telecommunications
Ministry of Communications, Sanchar Bhawan,
20,Ashoka Raod, New Delhi-110 001.
2 Chairman-cum-Managing Director, M/s.Bharat Sanchar Nigam Ltd.,
Sanchar Bhawan, 20,Ashoka Raod, New Delhi-110 001.
3 M/s.Bharat Sanchar Nigam Ltd., Chief General Manager, Telecommunications
Andhra Pradesh Circle, Abids,
Hyderabad.
4 M/s.Bharat Sanchar Nigam Ltd., General Manager,
Telecom District, Ongole.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue direction in the nature of Writ directing the Respondents herein to stop conduction of the Disciplinary proceedings initiated against the petitioner vide Charge Memo No.X-1/GMTD ONG/DISC/PS/2002 dt 25th March, 2003 issued by the 4th Respondent till the conclusion of the criminal proceedings pending against him in CC No.14/2002 on the file of the Special Judge for CBI cases at Visakhapatnam.

Counsel for the Petitioner:MR.VEMURI VENKATESWARA RAO

Counsel for the Respondent NoS.1 TO 4: SMT.P.SHARADA, STANDING

COUNSEL FOR CENTRAL GOVERNMENT

The Court made the following :

ORDER:

This writ petition is filed to issue a writ of mandamus directing the respondents herein to stop conducting the disciplinary proceedings initiated against the petitioner vide Charge Memo No.X-1/GMTD ONG/DISC/PS/2002 dated 25.3.2003 issued by the 4th respondent till the conclusion of the criminal proceedings pending against him in C.C.No.14 of 2002 on the file of the Special Judge for CBI cases at Visakhapatnam.

The learned counsel appearing for the petitioner contended that when both the departmental proceedings as well as the criminal proceedings are based upon the same set of facts and evidence, the departmental proceedings can be stalled till the disposal of the criminal case.

On the other hand, the learned counsel appearing for the respondents contended that there is no bar for proceeding against the writ petitioner departmentally inspite of the fact that a criminal case is pending.

The learned counsel appearing for the petitioner relied upon a decision reported in STATE BANK OF INDIA V.R.B.SHARMA, wherein it was held as under:

> "*It is fairly well-settled position in law that on basic principles proceedings in criminal case and departmental proceedings, can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common.*"

In ***M.PAULANTHONY V.BHARAT GOLD MINES LIMITED***, it was held that

"(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii)If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest".

From the above decisions, it is clear that though there is no bar

against the delinquent employee for proceeding departmentally when a criminal case is pending, but at the same time, when both the proceedings are based upon the same set of evidence, the departmental proceedings have to be stayed on account of pendency of criminal cases.

As seen from the charge memo, in the departmental proceedings and also the charge sheet in the criminal case, the evidence to be adduced in both the cases is one and the same. Therefore, the learned counsel for the petitioner is right in saying that both the proceedings are based upon the same set of evidence. Hence, it is desirable to stay the proceedings in the departmental enquiry till the disposal of the criminal case. However, if the fourth respondent considers that abnormal delay will take place in conducting the criminal case or if that the writ petitioner is protracting the criminal case, the department can proceed with the enquiry after giving notice to the writ petitioner assigning the reasons.

With the above observation, the writ petition is disposed of staying the departmental enquiry till the conclusion of the trial in the criminal case subject to the aforesaid mentioned two conditions.

08.12.2004

bsv

To

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